

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67380

FILED

APR 26 2017

ELIZABETH A. BROWN
CLERK OF THE SUPREME COURT
BY: *A. Wilcox*
DEPUTY CLERK

ORDER DENYING REHEARING

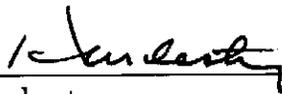
This is a petition for rehearing of our February 28, 2017, order affirming appellant's judgment of conviction. Appellant asserts that rehearing is warranted because this court overlooked or failed to consider *Robinson v. State*, 110 Nev. 1137, 881 P.2d 667 (1994), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

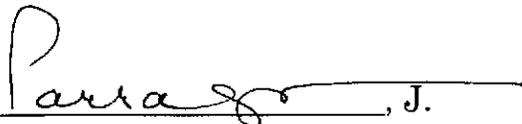
We considered *Robinson* and *Apprendi* in making our decision and concluded that those cases do not warrant relief for appellant. First, though the *Robinson* decision contains statements to the effect of statutory sexual seduction being a lesser-included offense of sexual assault, the focus in that case was on whether a juvenile who had been certified to be tried as an adult on charges of sexual assault was entitled to an instruction on statutory sexual seduction. *Robinson*, which was decided before *Barton v. State*, 117 Nev. 686, 694, 30 P.3d 1103, 1108 (2001), overruled on other grounds by *Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101 (2006), provides no analysis on statutory sexual seduction being a lesser-included offense of sexual assault with a minor, and thus any statement on this issue is dictum. Accordingly, *Robinson* is not controlling on the issue of whether statutory sexual seduction is a lesser-included

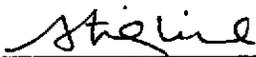
offense of sexual assault with a minor so as to entitle a defendant to an instruction on the lesser-included offense.

Second, *Apprendi*—a case about the Sixth Amendment right to a jury determination on any factor (other than a prior conviction) that increases the statutorily authorized sentence for an offense—does not address the analysis used for determining whether an offense is a lesser-included offense. Appellant cites no controlling authority applying *Apprendi* to double jeopardy or lesser-included offense analysis and thus fails to demonstrate that *Apprendi* requires the age of the victim to be an element of sexual assault with a minor for purposes of the *Blockburger*¹ “elements” test. Because appellant has not demonstrated a basis for rehearing, NRAP 40(c)(2), we deny the petition for rehearing.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Stefany Miley, District Judge
Gentile, Cristalli, Miller, Armeni & Savarese, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹*Blockburger v. United States*, 284 U.S. 299 (1932).